MEMORIAL

OF THE

BALTIMORE AND OHIO RAIL ROAD

COMPANY.

MEMORIAL.

To the Honorable
The General Assembly of Maryland:

The memorial of the Baltimore and Ohio Rail Road Company, respectfully represents:

That in the Act of Assembly, passed at the extra session of May 1836, chapter 395, of your honorable body, there is a provision making it the duty of your memorialists, in the prosecution of their road westward from Harper's Ferry, to locate and construct it, so that it shall pass through Hagerstown and Boonsborough, under the penalty of forfeiting one million of dollars to the State of Maryland, for the use of Washington county.

When the above mentioned act was passed, your memorialists did not object to this particular provision, because they were not aware of the expense and difficulties that a compliance with it would involve. The surveys from which they derived the information that they then possessed, had been confined to what was apparently the natural route to the west, the valley of the Potomac, and they knew nothing that would make the construction of the road through the centre of Washington county more expensive than along its southern border. Nor was your honorable body at that time more fully informed upon the subject than your memorialists; and it may be presumed, assented to the provision in question, in the belief of the Legislature that it would benefit two flourishing towns, at a cost which would not be objectionable as regarded the other portions of the State, which were all interested in the completion of the road to the west, at the least expense, and in the shortest time.

After the act of May session 1836 was passed, your memorialist instituted the most extensive examinations of the country west o

Harper's Ferry, and among other routes surveyed and estimated, were the route through Hagerstown and Boonsborough, and a route lying in Virginia, from Harper's Ferry to within six miles of Cumberland, where it crossed the Potomac into Maryland. The former was the most costly of the practicable routes, and the latter was the cheapest, and in all other respects the best.

The entire route in Maryland from a point near Harper's Ferry to Cumberland, passing through Hagerstown and Boonsborough, with the heavy rail, was estimated to cost for actual construction $6,123,-662; while the entire Virginia route from the same points with a similar rail, was estimated to cost for actual construction $4,039,745, being a difference in favor of the Virginia route of $2,083,917; and if the repair and working of the road be considered, the difference in favor of the Virginia route was estimated at $2,625,400.

If the company could have been permitted to occupy the route in Maryland from a point near Harper's Ferry to Cumberland, passing through Hagerstown and Boonsborough, and crossing the Potomac to Sleepy Creek in Virginia, (as will appear hereafter they could not) the cost of the actual construction of such route to Cumberland was estimated at $5,232,631, still making a difference in actual construction in favor of the Virginia route of $1,192,886; and if the working and repairs of the road be taken into view, the difference in favor of the Virginia route was estimated at $1,579,070.

Even if the board without sufficient regard to the nature of transportation had adopted the old form of plate rail, although the construction of either of the Maryland routes, as herein indicated, would thereby have been cheapened, the difference in favor of the Virginia route would have been considerably greater.

All of which will appear in greater detail from the surveys of the Baltimore and Ohio Rail Road to the Ohio river, herewith submitted.

To have adopted either route passing through Hagerstown and Boonsboro', would have therefore involved your memorialists in an unnecessary expense to a serious amount. Unnecessary, because the connection with the western waters could be effected without it, and it was this connection that your memorialists were created to complete. The resources of your memorialists consisted of the subscriptions of the States of Maryland and Virginia, and the cities of Baltimore and Wheeling, amounting to $8,360,520, every dollar of which was necessary to enable them to reach the western waters by the cheapest and shortest route, and with the heavy iron rail. Unless therefore an imperfect structure could be resorted to, or fresh resources could be obtained, (and your memorialists did not know where to look for them, unless to the stockholders, public and private, who had already so largely contributed to the undertaking,) the adoption of the Hagerstown and Boonsborough route would have destroyed the prospect of

a connection with the western waters through the agency of your memorialists.

But your memorialists represent that in the condition in which they were actually placed before they could be entitled to receive any part of the States' subscription, it became, from causes they could not control, impossible to occupy any portion of the Virginia territory without occupying the entire distance from Harper's Ferry, to within six miles below Cumberland; and that, in this situation, a preferance of the Maryland route would not only have involved the largest difference above stated, to wit, the sum of $2,625,400, but must have terminated the work at Cumberland.

For your memorialists represent that the time limited by the Virginia charter for the construction of the road in that State, expired on the 4th July, 1838, and the Legislature consented to prolong it for five years only upon the express condition that the road should be carried through the territory of the State of Virginia, from Harper's Ferry to a point six miles below Cumberland; which will appear from the Virginia law herewith submitted.

To have rejected the law of Virginia, therefore, would have been to deprive your memorialists of the power of completing the road to the point of its ultimate destination at Wheeling; to reach which point, whatever route may have been adopted east of Cumberland, it was necessary to pass through the North Western portion of the State of Virginia. The same law which prolonged the time for completing the road authorised a subscription of $1,058,420, to the Stock of the Company, as part of the resources already referred to, and this would have been lost had the law in question not been accepted.

Under these circumstances your memorialists did not believe that they had a right to hesitate as to the course to be pursued by them, and they adopted the route through Virginia under the firm conviction, that to adopt any other would be a violation of their duty, that would not be justified by the fact that they had adhered to the letter of the law. They felt it rather to be their duty to yield to the necessity thus imposed upon them, and to confide in the wisdom of the Legislature of Maryland to appreciate their course, and give such direction to the resources contributed by the State as would most surely advance the enterprise, and promote the interests of all classes of their constituents.

Nor were your memorialists restrained from adopting the route through Virginia by the belief that any injury was done to the people of Washington county thereby. It is true that there would be one avenue less to market than if the Hagerstown and Boonsborough route had been adopted; but then Washington county was already far more fortunate in this respect than any other county in the State. Both the towns named in the act were on the National road, and Hancock and Williamsport, two flourishing places, were on the line of the Chesapeake and Ohio Canal, the convenient avenue to market of the mills

which produced the great staple of the county. Besides this too, Hagerstown was connected with the line of Pennsylvania improvements by the Franklin rail road, and was the point of divergence from which the western travel, turning away from the commercial emporium of Maryland, sought the market of a neighboring and rival city. Comparing the fortunate position of Washington county with that of other counties of the State, your memorialists did not perceive that they did any injury to it, by the course which they pursued. If they did not add to its advantages at the expense of a million of dollars to the stockholders in the company, of which the State of Maryland was the largest, they certainly did not impair in any wise the many advantages of which the county was already the enterprising and fortunate possessor.

Your memorialists entertained the hope, that the facts here stated, which were generally known, would have prevented any steps to enforce the penalty of one million of dollars, at least without some express permission of the State authorities But in this hope your memorialists have been disappointed. A suit has been brought in the name of the State of Maryland for the use of Washington county, against the Baltimore and Ohio rail road company, to the September term 1840 of Baltimore county court, for one million of dollars, which makes it the duty of your memorialists, from a proper regard to the interests of the State, to bring the subject to the attention of the Legislature, in order that so much of the act of the extra session of 1836, as imposes the penalty, may be repealed.

By order of the Board,

LOUIS McLANE,

President of the Balt. & Ohio Rail Road Company.